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PART III.

Legislative Measures and Rules thereunder.

NOTIFICATION.

No. 359—L. C., dated 10th June 1911.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Indian Contract Act as in force in Mysore is published for general information with a statement of objects and reasons.

By Order,
S. HIRIYANNAIYA,
Secretary, Mysore Legislative Council.

A Bill further to amend the Indian Contract Act as in force in Mysore.

Whereas it is expedient further to amend the Indian Contract Act as in force in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent, commencement, and application.

(1) This Regulation may be called "The Indian Contract Act Amendment Regulation, 19 ."

(2) It shall extend to the whole of Mysore.

(3) It shall come into force on

(4) It shall apply to every contract in respect of which any suit is instituted or which is put in issue in any suit after the commencement of this Regulation.

Substitution of a new section for Section 16 of the Indian Contract Act, 1872.

2. Section 16 of the Indian Contract Act, 1872, shall be repealed and the following substituted therefor, namely :—

"16 (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of Section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence."

Amendment of Section 19 and addition of a new section after that section.

3. In Section 19 of the said Act, the words "undue influence" shall be repealed and after the same section, the following new section shall be inserted, namely :—

Power to set aside contract induced by undue influence.

"19 A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just."

Amendment of sub-section (1) of Section 25 of the Indian Contract Act, 1872.

4. The word "documents" shall be substituted for the word "assurances" occurring in sub-section (1) of Section 25 of the said Act.

Amendment of para 1 of Section 43 of the Indian Contract Act, 1872.

5. The words "one or more" shall be substituted for the word "one" in para 1 of Section 43 of the said Act.

Amendment of illustration (*e*) to Section 63 of the Indian Contract Act, 1872.

6. The word "composition", shall be substituted for the word "compensation" occurring in the illustration (*e*) to Section 63 of the said Act.

Amendment of Section 74 of the Indian Contract Act, 1872.

7. (1) Paragraph 1 of Section 74 of the said Act shall be repealed and the following substituted therefor, namely :—

Compensation for breach of contract, where penalty stipulated for.

"74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

(2) The following illustrations shall be added after illustration (*c*) to the said section; namely :—

"(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty."

STATEMENT OF OBJECTS AND REASONS.

The law on the subject of contract in force in the State is the British Indian Act, IX of 1872, with the amendments made by the Indian Contract Act Amendment Act, IV of 1886. The Act has since been amended in British India by Acts XII of 1891 and VI of 1899. It has now been considered desirable to introduce these amendments into the Act as in force in the State also, and thus assimilate the law on the subject with that in British India. The members of the Representative Assembly have also desired that action might be taken in this direction very early. Hence the present Bill. The notes on the clauses explain the changes which are intended to be introduced into the Act by the Bill.

Notes on clauses.

1. *Clause 2.*—The definition of "undue influence" contained in Section 16 of the existing Act is not comprehensive enough and is merely an enumeration of two

common classes of cases of undue influence. It is now proposed to state the law of undue influence in the form of the general principles on which it has been determined by courts of equity.

2. *Clause 3.*—Where a contract has been obtained through undue influence, the existing Act simply makes it voidable at the option of the party who gave such a consent. It is now proposed to give a wider discretion to the Courts in dealing with such cases. The new Section 19 A accordingly gives power to them to relieve the party who acted under such influence even though he may have received some benefit under the contract, subject to the condition that the Court may impose such terms upon the party seeking relief, as to it may seem just.

3. *Clause 7.*—This amplifies the scope of the existing Section 74 so as to make it applicable in terms to all stipulations by way of penalty, whether the penalty consists of a sum named in the contract or not, and is intended to relieve the debtors to some extent from payment of exorbitant interest. The members of the Representative Assembly in 1909 prayed that Civil Courts may be empowered to relieve the debtors in cases where parties have contracted to pay usurious rates of interest. The section as now amended is deemed sufficient to enable the Courts to give parties all reasonable relief.

Clause 1 (4) is intended to make the provisions of the Bill applicable to pleas of unconscionable bargain set up by defendants in all suits after the commencement of the Regulation whether the bargain was made before or after the commencement of the Regulation.

The changes proposed to be introduced by clauses 4, 5 and 6 are of a purely verbal character and call for no explanation.